25 years. I took into account the likelihood of increased earnings. He was on a salary scale of $152 to $475 per mensem and was expected to reach the maximum on 1st February, 1969. There was, in my opinion, a reasonable probability that if the deceased had not died, he would have been promoted to the Executive Grade, the salary scale of which is $225 to $655 per mensem. I took into consideration the fact that the deceased was a healthy man in the prime of life. Making due allowance for all contingencies, including the contingency that the widow, who was 32 years old at the date of the trial, might remarry, I fixed the basic figure of the deceased's net contribution to his household at $300 per mensem and the number of years' purchase at 15 and allowed $37,020 as compensation for the widow, daughter, and son. The deceased gave his father and mother $50 each per mensem for their expenses. Considering that his variable allowance would have been reduced about 14 months after his death and that the earnings from the two part-time jobs other than the teaching job would probably have ceased about the same time and the fact that his father was 60 years old and his mother 54, I awarded his parents as compensation a sum of $1,000 each. The total amount of damages came to $42,720. From this I deducted a gratuity of $3,720 which was a financial benefit arising out of the death of the deceased. That left a balance of $39,000. As the deceased's share in the responsibility for the damage suffered by him was one-fifth, I reduced the damages recoverable by one-fifth, i.e. $7,800, leaving a sum of $31,200. I gave judgment for the plaintiffs for this sum, apportioning it between the deceased's estate and the various dependants, and costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Mallal & Namazie.*

LOO GEOK HONG v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill J.A., and Hepworth J.) November 21, 1960]

[Penang — F.M. Criminal Appeal No. 18 of 1960]

Criminal Law — Murder — Direction to jury — Accident — Provocation — Self-defence — Penal Code, s.302.

The appellant was convicted for the murder of his wife. His defence then was that the stabbing was accidental and that he was entitled to have the charge reduced to manslaughter because either he was acting in self-defence and went beyond what was permissible or that he was deprived of his power of self-control by grave and sudden provocation. The jury brought in a unanimous verdict of guilty. On appeal it was contended that the summing-up of the learned trial Judge was defective because he did not put to the jury the possible available defence as provided by exception 4 of section 300 of the Penal Code and that the summing-up might have led the jury to take a wrong view of the law.

Held: (1) although a Judge sitting with a jury should put to the jury any defence available on the evidence irrespective of whether or not reliance has been placed on it at the trial, the way in which it is to be complied with is a matter for the trial Judge to decide in view of the actual evidence with which he is concerned;

(2) as the facts were put to the jury and they were given a direction that if they thought there might reasonably be something in the defence view of them they should reduce the charge and convict for manslaughter, the question of what labels were attached to that particular set of facts is irrelevant;

(3) taken as a whole there was nothing in the summing-up inconsistent with the law as stated by the Privy Council in *Attorney-General for Ceylon* v. *Perera*.(1)

Case referred to:

(1) *Attorney-General for Ceylon* v. *Perera* [1953] A.C. 200; [1953] 2 W.L.R. 238.

COURT OF APPEAL (CRIMINAL).

S. P. Seenivasagam for the appellant.

Abdul Hamid bin Omar (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted at the Penang Assizes by Mr. Justice Rigby and a jury for murder in contravention of section 302 of the Penal Code.

The charge against him was that on 22nd July, 1960, at a premises in Ayer Itam he murdered his wife Yeap Luan Eng.

Up to a point the facts were not in controversy.

There was considerable disparity in age between the parties and latterly there was a history of conjugal unhappiness apparently resulting from the appellant's non-success in business and consequent straitened circumstances.

On the day in question there was some sort of unpleasantness between the parties in the presence of strangers at or near a coffee-shop in Ayer Itam and later in the evening the appellant and his wife retired to the conjugal bedroom where shortly afterwards, and there is no question about this, the appellant killed her by inserting a large knife three times into vital parts of her person.

As the trial Judge had pointed out in his summing-up, only two people knew what happened in that bedroom. One of them was not available as a witness at the trial. I refer, of course, to the dead woman. The other was the appellant and at the trial he gave his account of what happened. If that account was true it made out either that he was innocent because the stabbing was accidental (although I must point out that that involves the hypothesis not of one accident but of three accidents) or that he was entitled to have the charge against him reduced to manslaughter because either he was acting in self-defence and went beyond what was permissible or he was deprived of his power of self-control by grave and sudden provocation.

All that was put to the jury at very great length in the summing-up which counsel for the appellant has conceded was at little pains to

conceal the Judge's own view that the proper verdict was one of manslaughter. In spite of that the jury, after a fairly short absence brought in a unanimous verdict of guilty of murder.

The conviction has been attacked before us on the ground that the summing-up was defective in certain respects.

In the first place it was said that, although nothing was said on the point at the trial, the Judge should have put to the jury the possible available defences by reason of Exception 4 to section 300 of the Penal Code :—

> " Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner."

Now, generally speaking, as a matter of law a Judge sitting with a jury should put to the jury any defence available on the evidence irrespective of whether or not reliance has been placed on that defence at the trial or indeed irrespective of whether or not it has been mentioned by counsel at the trial. That, however, is a general proposition of law and while not wishing to detract or suggest I am detracting in any way from its generality it must be pointed out that the way in which it is to be complied with is a matter for the trial Judge to decide in view of the actual evidence with which he is concerned.

It is not enough, nor on the other hand is it necessary, just to say 'provocation', 'self-defence', 'sudden quarrel'. The words are of little importance. What matters is what the words stand for what they mean in the light of the actual evidence. And in the present case a view of the facts that would have made out the defence of self-defence was the same as the view of the facts that would have made out the defence of killing in the course of a sudden quarrel. The facts were put to the jury and they were given a direction that if they thought there might reasonably be something in the defence view of them they should reduce the charge and convict of manslaughter. That being so, the question of what labels were attached to that particular bundle of facts is in our view irrelevant.

Then it was said that there are certain passages in the summing-up which might have led the jury to take a wrong view of the law, to take the view that once intention to kill was made out that was the end of the matter, and in particular that was the end of any defence of provocation.

It is true there are sentences in the summing-up which read in isolation and detached from their context are capable of bearing that interpretation. In our view, however, taking the summing-up as a whole the jury should have been left in no doubt that not only had they to be satisfied of the appellant's intention to kill but they had to be satisfied that there was no defence of provocation or private defence before they were entitled to convict him of murder. The actual words used are not the same, but we can find nothing in the summing-up inconsistent with the law as stated by the Privy Council in the case of *Attorney-General for Ceylon* v. *Perera* [1] where Lord Goddard (at p. 205) referred to the distinction in English law between what is generally called involuntary and what is called voluntary manslaughter. He pointed out the former expression is used to describe that class of manslaughter where the death is caused by gross and culpable negligence and that the second expression is appropriate to the case where a person does intend to kill or inflict grievous bodily harm but his intention to do so arises from sudden passion involving loss of self-control by reason of provocation. He then went on to refer to section 294 of the Ceylon Penal Code which, so far as I am aware, is exactly the same as section 300 of our Penal Code and then said :—

> " To reduce the crime from murder to manslaughter the offender must show, first, that he was deprived of self-control, and secondly, that that deprivation was caused by provocation which in the opinion of a jury was both grave and sudden. In directing the jury that they must ask themselves whether the kind of provocation actually given was the kind of provocation which they as reasonable men would regard as sufficiently grave to mitigate the actual killing of the woman, in the opinion of their Lordships the Judge was merely directing the jury as to how they should determine whether the provocation was grave. The words 'grave' and 'sudden' are both of them relative terms and must at least to a great extent be decided by comparing the nature of the provocation with that of the retaliatory act. It is impossible to determine whether the provocation was grave without at the same time considering the act which resulted from the provocation, otherwise some quite minor or trivial provocation might be thought to excuse the use of a deadly weapon."

We see nothing in the charge of Rigby J. inconsistent with the law as thus stated by the Privy Council and I would repeat that it is only by taking individual sentences out of their context that any case may be made out for saying that what he laid down was that a bare intention to kill was sufficient. He made it very, very clear that it was only after the jury had rejected any reasonable possibility of the existence of a defence of self-defence or provocation that they should apply their minds to the question of whether they were satisfied as to the existence of intent to kill and that if they were so satisfied they should convict of murder.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons.*